in the

Supreme Court

of the

United States

CASE NO.: 77-1745

JOHN E. GDOWIK,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Petitioner prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Florida entered in the above styled case on February 28, 1978.

OPINION BELOW

The opinion of the Supreme Court of Florida is reported at ____So.2d ____and is printed in the Appendix. The opinion of the Fourth District Court of Appeals of the State of Florida is reported at 352 So.2d 183 (Fla. 1977) and is printed in the Appendix A.

JURISDICTION

The judgment of the Fourth District Court of Appeals for the State of Florida was entered on October 18, 1977. The judgment of the Supreme Court of Florida was entered on February 28, 1978. Rehearing was denied by the Supreme Court of Florida on April 17, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether the trial court's exclusion of defense witnesses presented for the purpose of demonstrating mitigating factors in an indirect criminal contempt is a violation of due process under the Fifth Amendment to the United States Constitution?

2. Whether the trial court erred in failing to appoint counsel to the Defendant who possessed no liquid assets with which to hire private counsel in violation of the Sixth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the United States Constitution provides that:

> Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

The Petitioner herein was originally involved as a party in a dissolution of marriage action before the trial court. As a result of his actions in the civil proceedings, a notice to show cause why the Petitioner herein should not be found in indirect criminal contempt was issued on October 30, 1975. Criminal contempt proceedings were held on November 10, 1975, the State being represented by PHILIP S. SHAILER, State Attorney for the Seventeenth Judicial Circuit, in and for Broward County, Florida. At that hearing, the Petitioner, JOHN E. GDOWIK, was found and adjudged guilty and sentenced to thirty (30) days incarceration.

At the trial court hearing on the indirect criminal contempt, the Petitioner advised the trial court that he had not retained counsel and that he was unable financially to make arrangements with private counsel for representation. Based upon these representations, the Court conducted an indigency hearing at which time the sworn testimony of the Petitioner and four financial exhibits were offered and considered by the Court. The lower Court ruled that the Petitioner had adequate assets and income so as to enable him to hire private counsel; Court appointed counsel was refused. This ruling, however, ignored the fact that the Petitioner's assets were not liquid, but rather were tied up in the pending dissolution of marriage action from which this indirect criminal contempt stemmed.

Findings of fact, findings of guilt, adjudication of guilt, judgment and sentence were entered by the trial court on November 20, 1975, incarceration to be of thirty

(30) days duration. The Petitioner timely filed his Notice of Appeal with the District Court of Appeal of the State of Florida, Fourth District and proceeded in propria persona. Petitioner filed his Assignments of Error and brief on the merits. In the Assignments of Error the Petitioner specifically raised as error that the Trial Judge, The Honorable Louis Weissing erred when he determined that the Petitioner, JOHN E. GDOWIK, was not entitled to the assistance of court appointed counsel.

Subsequent to the pro se filing of pleadings and brief, the Petitioner retained counsel for the purpose of appeal. The trial court's decision was affirmed without opinion by the District Court of Appeal of the State of Florida, Fourth District on October 18, 1977. Petition for Writ of Certiorari to the Supreme Court of Florida was denied on February 28, 1978; rehearing was denied on April 17, 1978.

REASONS FOR GRANTING WRIT

-I-

THE TRIAL COURT'S EXCLUSION OF DEFENSE WITNESSES PRESENTED FOR THE PURPOSE OF DEMONSTRATING MITIGATING FACTORS IN AN INDIRECT CRIMINAL CONTEMPT IS A VIOLATION OF DUE PROCESS UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It is well established that due process and the Sixth Amendment guarantee a defendant charged with a crime such basic rights as "an opportunity to be heard in his defense — a right to his day in court — . . . and to be represented by counsel." *In re Oliver,* 333 U.S. 257, 68 S. Ct. Reporter 499, 92 L.Ed. 682. And due process equally applies to contempt hearings. *Holt vs Virginia,* 381 U.S. 131, 85 S. Ct. 1375, 14 L.Ed.2d 290 (1965).

The right to present evidence in a criminal contempt hearing extends past the legal technicalities of a defense and also encompass mitigating circumstances surrounding the factual allegations of the contempt. *Harris vs. United States,* 382 U.S. 162, S. Ct. 352, 15 L.Ed.2d 240 (1965) and *Taylor vs. Hayes,* 418 U.S. 488, S. Ct. 2697, 41 L.Ed.2d 897 (1974).

> Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or

explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, *relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. Cooke vs. United States,* 267 U.S. 517, 45 S. Ct 390, 69 L.Ed. 767.

This right on the part of the accused defendant to present evidence in the form of mitigation is also expressly recognized in Florida. See *Baumgartner vs. Joughin,* 141 So. 185 (Fla. 1932) and *State Ex Rel Giblin vs. Sullivan,* 26 So.2d 509 (Fla. 1946) as to indirect criminal contempt actions; *Manning vs. State,* 234 So.2d. 16 (Fla. 2 DCA 1970) as to direct criminal contemp proceedings; and *Dykes vs. Dykes,* 104 So.2d 598 (Fla. 3 DCA 1958) as to civil contempt proceedings. In fact the right to present mitigating circumstances is considered to be of utmost importance.

Appellant contends he was not afforded the benefits of the rule in that he was not informed of the nature of the contempt, he was not given an opportunity to show cause why he should not be held guilty thereof and he was not given an opportunity to present evidence of excusing or mitigating circumstances. The state counters that by exclaiming, "He grabbed me. He grabbed me, your Honor," appellant acknowledged that he knew precisely why he was being held in contempt, that he had no defense thereto and that he was presenting the

substance of the exclamation as an excuse or as mitigating circumstances. We cannot agree.

> Given an opportunity for further and full reflection, perhaps indeed the advice of counsel, any number of excusing or mitigating circumstances could have been advanced by appellant even if it can be said that he could not otherwise have set up any absolute defense. The court should have more meticulously complied with the rule. *Speller vs. State,* 305 So.2d 231 (Fla. 2 DCA 1974).

Thus introduction of evidence as to mitigating circumstances is permissible and the right to so present is constitutionally protected even in the absence of an absolute defense.

The record of the indirect criminal contempt proceedings held before the Honorable Louis Weissing on November 18, 1975 clearly reveals that the Petitioner herein was prohibited from introducing evidence and witnesses in mitigation of his indirect criminal contempt. In specific, the Petitioner, JOHN E. GDOWIK, attempted to introduce testimony as to the reasons behind his allegedly contemptuous conduct directed toward the Trial Judge hearing the pending dissolution of marriage, the Honorable Otis Farrington. This evidence of mitigation was ruled to be irrelevant and immaterial since it did not concern a defense to the contempt charged.

> DR. GDOWIK: Your, Honor, I know this is a difficult area for all of us, but certain charges have been leveled against me. And I still feel

that I have the right, or the duty, or obligation to defend myself. And part of my defense is to show that Judge Farrington has indeed, exercised bias, prejudice, poor judicial conduct, improper judicial conduct, whatever it is.

If it comes out that this will lead one to believe that maybe Judge Farrington is corrupt and fixed. That is not the real issue here. The issue is whether I am going to be able to defend myself with these charges that have been leveled against me, and, again, the reason as to why I was pushed to such an emotional state. (TR 44). . . .

DR. GDOWIK: May I call Judge Farrington?

THE COURT: For that kind of stuff, I wouldn't ask Judge Farrington to come up here.

DR. GDOWIK: Then I am not going to be able to adequately defend myself here.

MR. SHAILER: Your Honor, everything we have heard for the last ten minutes sounds to me that it goes to what we call mitigation rather than in defense of the substantive allegations and proof before the Court thus far.

DR. GDOWIK: I would agree with that. There are mitigating circumstances here, certainly.

THE COURT: Nobody is in a fuss about that.

DR. GDOWIK: I would like to show how you can, you know, about the mitigating circumstances. I just would like to show this court the utter frustration. (TR 45). . . .

DR. GDOWIK: I understand the distinction. We talked before about mitigating circumstances. This is one thing I'd like to show this Court. Of course, I am not prepared to go to a Supreme Court to get a decision as to whether the Court of and in itself, per se, demands respect just because it is a Court. It may be a good case to take that far, but I am not, in my financial position, able to take it.

I still contend, and I agree with you, Mr. Shailer, the Court should command respect, and justice should proceed orderly, but I don't believe that there was much justice over the Court that Judge Farrington presided in in my particular case, and that is the reason why I am here today, because I was pushed and put in an emotional state. (TR 48-9) . . .

THE COURT: Who is your next witness Doctor?

DR. GDOWIK: Am I going to be able to call Judge Farrington?

THE COURT: No, sir.

DR. GDOWIK: Mr. Britton is my next witness. And I received this communication from him.

THE COURT: What do you want from him?

DR. GDOWIK: What do I want from him?

THE COURT: Yes.

DR. GDOWIK: I'd like to question him about his conduct in this particular case, in some most unusual circumstances which have arisen. And I think I should be permitted to call him.

And I would not like to reveal what I'm going to ask him right now. I'd like to get him in here and have a few surprises.

THE COURT: Doctor, I tell you, you see, I keep trying to drive this home to you, sir.

The Supreme Court tells me to hear this thing about you going down to Judge Farrington's office and phone calls to Judge Farrington's office, things that you told Judge Farrington's secretary.

Nowhere in here do I see where Mr. Britton could sit in. I would assume he is over in his office working, or some other Court.

DR. GDOWIK: Mr. Britton was present when this fix was made and entered into this conspiracy along with my wife and Mr. Saul Cohen. I would like to question the whole three of them as a block.

What Mr. Britton has done is effectively split up the testimony. And he will be able to know what I have asked my ex-wife and Mr. Cohen, and be prepared. I'd like to call him first and pose some questions to him that are very sticky, and do really tend to lead one to believe that indeed a conspiracy did exist, which originated with Walter Heller & Company and Mr. Saul Cohen; that my wife and Mr. Britton did conspire to deny me due process of law; that Mr. Cohen did make a contact with Judge Farrington, and indeed asked this Judge to favor my wife.

And this has been the case in this particular case. And I have some testimony from Mrs. King to really lead me to believe that these things did occur. I'd like to question Mr. Britton, my wife, and Mr. Saul Cohen on these events.

MR. SHAILER: Your Honor, once again, we are back at the same cycle we have been in for the last 15 minutes or so. The Doctor wants to relitigate his divorce proceedings, to litigate his view that a conspiracy did or didn't exist between his ex-wife and her attorney and some other person, that are wholly irrelevant and immaterial to the sole issues before this Court; did the respondent commit acts constituting criminal contempt of the Court or their tendency to obstruct, impede, and interfere with the orderly administration of justice.

There are specific allegations that are set forth in the Rule to Show Cause. There is testimony before this Court about these allegations. And now we are on the respondent's side of the case. And he has every opportunity to go to the substantive merits of whether or not he did commit the acts as set forth in the Rule to Show Cause. That is the issue.

Whether or not he feels there is some conspiracy between his ex-wife and her attorney is wholly irrelevant to the issues of whether he did threaten a Judge who is acting within his judicial authority and judicial capacity and jurisdiction.

Those are the issues here in this contempt citation. We are going around and around and around, based on the proffer what these witnesses would show. The State would object on the grounds those questions and any answers thereto would be wholly irrelevant and immaterial.

DR. GDOWIK: No, they would not.

MR. SHAILER: Did he or did he not —

DR. GDOWIK: I have a defense here. (TR 50-2) . . . .

DR. GDOWIK: I think the issue here also is my defense of these particular charges, and any mitigating circumstances. And I am sure that my emotional state and learning of this fix, and

finding out that indeed it was true, did drive me to do certain things. And I'd like to show the Court what did occur, unbelievable things that have occurred to me.

MR. SHAILER: The defendant — respondent is once again confusing the defense to the substantive issues with the matter of mitigation.

DR. GDOWIK: I'm not confusing them. I am taking a two-sided attack.

MR. SHAILER: Your Honor, I wonder if you'd ask the Doctor to wait until I finish my statement, that he is again confusing the matter of mitigation.

If he is saying he wants to admit the charges that have been leveled against him, and then wishes to explain to the Court what led him to undertake the acts that he undertook, he certainly would have that opportunity at that time.

But he seems to be mixing apples and oranges right now. (TR 53-4). . . .

DR. GDOWIK: My defense, again, is, number one, mitigating circumstances; and, number two, was this Court indeed contemptuous, and did indeed a conspiracy exist to deny me my due process of law. I'd like to show the Court it did. And this is why I acted as I did.

MR. SHAILER: Those would be irrevelant and immaterial on that issue, and I would move to strike any such testimony.

And if that is the Doctor's proffer as to what the testimony from that witness would be, as well as previously with Judge Farrington, the State would object and move to strike any such testimony.

THE COURT: I'm going to sustain Mr. Shailer's objection. Get on with your case. (TR 58-9). . . .

Similar testimony of Saul Cohen was also excluded by the trial court. (TR 71-3).

Thus the record clearly reflects that both the State Attorney and trial court were of the opinion that evidence of mitigating circumstances was not appropriate, but rather that the testimony presented by the Defendant must be limited to a defense of the substantive charges. Such a belief is improper under both Federal and State constitutional law. As previously noted, the Defendant in an indirect criminal contempt hearing has the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. *Cooke vs. United States,* Supra; *Harris vs. United States,* Supra; *Taylor vs. Hayes,* Supra; *Baumgartner vs. Joughin,* Supra; and *State Ex Rel Giblin vs. Sullivan.* Thus upon the Defendant's having plead not guilty to the substantive charge of indirect criminal contempt, he was constitutionally permitted to

introduce evidence of extenuation of the offense and mitigation of the penalty. This evidence of extenuation and mitigation offered by the Defendant in his own behalf was excluded and not considered by the trial court herein.

Thus since the Defendant upon pleading not guilty to the charge of indirect criminal contempt was prohibited from presenting evidence of extenuation and/or mitigation the Petitioner was denied a fair trial in violation of the Defendant's Fifth Amendment Rights to due process as incorporated and made applicable to the State through the Fourteenth Amendment to the United States Constitution.

-II-

THE TRIAL COURT ERRED IN FAILING TO APPOINT COUNSEL TO THE DEFENDANT WHO POSSESSED NO LIQUID ASSETS WITH WHICH TO HIRE PRIVATE COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It has long been recognized in American jurisprudence that every person accused of a crime is guaranteed the right to have assistance of counsel for his defense under the Sixth Amendment to the United States Constitution. The Court ruled as early as 1938 in reference to Federal prosecutions that the right to counsel also extends to the right to appointment of counsel in the case of an indigent defendant. *Johnson vs. Zerbst,* 304 U.S. 458, 58 S. Ct. 1019, 83 L.Ed. 1461 (1938).

This right to court appointed counsel in the case of indigency was made applicable to state court prosecutions by this Court in *Gideon vs Wainwright,* 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed.2d 799 (1963). Specifically, the Sixth Amendment guarantee to a right to counsel was deemed applicable to the States through incorporation into the due process clause of the Fourteenth Amendment. Furthermore, the Court recognized that appointment of counsel for an indigent criminal defendant is a "fundamental right, essential to a fair trial." This Court has held that appointment of counsel is required in any criminal proceeding in which the State is seeking incarceration. As held in *Argensinger vs. Hamlin,* 407 U.S. 25, 92 S. Ct. 2006, 32 L.Ed.2d 530 (1972), "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

Clearly the case at bar falls within the proscriptions of *Argensinger vs. Hamlin* in that the Petitioner herein was sentenced to be incarcerated for a period of thirty (30) days.

This Court has long recognized that denying effective assistance of counsel because of financial status is discriminatory and is constitutionally prohibited at both the trial and appellate levels. "In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color." *Griffin vs. Illinois,* 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed. 891 (1956). See also *Mayer vs. Chicago,* 404 U.S. 189, 92 S. Ct. 410, 30 L.Ed.2d 372 (1971): "The size of the defendant's pocketbook bears no more relationship to his guilt or innocence in a non-felony than in a felony case."

In fact this Court has gone so far as to hold that at least as to criminal cases, denial of counsel to an indigent constitutes "invidious discrimination" requiring application of the compelling state interest test. "Absolute equality is not required; lines can be and are drawn and we often sustain them . . . but where the merits of the one and only appeal an indigent has of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor." *Douglas vs. California,* 372 U.S. 353, 83 S. Ct. 814, 9 L.Ed.2d 811 (1963).

The question raised in this Petition of Writ of Certiorari is what test or standard to apply in determining the definition of the word indigency; that is to say at what level of lack of prosperity does the right to appointed counsel in a criminal case attach. There is no question from a quick review of the testimony and evidence presented at the indigency hearing in this case but that the Petitioner herein did possess assets in both realty and personal property. As recognized by the trial court the Petitioner "had such assets and income as to clearly reflect that he was not indigent or insolvent." The trial court, however, failed to recognize that the Petitioner had no liquid assets with which to hire an attorney.

The federal courts of this country have recognized that the test for appointment of counsel in a criminal case is "financial inability." *U.S. vs. Kelly,* 467 F.2d 262 (7th Cir. 1972). "The Defendant need not be "indigent" but instead, when the Defendant lacks the financial resources which would allow him to retain a competent criminal lawyer at the particular time he needs one, he is entitled to appointed counsel." *Anaya vs. Baker,* 427

F.2d 73 (10th Cir. 1970). The Petitioner herein did not possess the sufficient financial resources at the time he was called upon to respond to the Order to Show Cause with which to hire a competent criminal attorney. Rather, as the Judge was well aware since this criminal contempt arose from the pending dissolution of marriage, the Petitioner's entire assets were tied up in and frozen by the pending dissolution of marriage. As such the Petitioner lacked any funds or readily liquidable assets with which to hire private counsel.

It must be remembered that indigency is not necessarily equitable with destitution. Rather the test is whether or not representation essential to an adequate defense is beyond present means of the Defendant. In cases where the Defendant's assets are not liquifiable, the Defendant should be appointed criminal counsel. See *U.S. vs. Cohen,* 419 F.2d 1124 (8th Cir. 1969). In that case the Trial Judge held an indigency hearing which revealed that the Defendant therein possessed equity in 1,520 acres of land; appointed counsel was rejected. However the Eighth Circuit Court of Appeal ruled that the Defendant has a "financial inability" to hire private counsel since his equity was not readily liquifiable. And in the case at bar the Trial Judge was well aware of the existence of the pending dissolution of marriage from which the indirect criminal contempt stemmed which had in effect frozen the Petitioner's available assets.

Nor is the Florida test of insolvency for the purpose of appointing counsel different than the Federal. "The test of insolvency is whether the Defendant personally has the means, or property which can be converted to the means, to employ an attorney to represent him."

Sapio vs. State, 223 So.2d 759 (Fla. 3 DCA 1969). See also *Keur vs. State,* 160 So.2d 546 (Fla. 2 DCA 1963); *Lawrence vs. State,* 76 So.2d 271 (Fla. 1954; *Loy vs. State,* 74 So.2d 650 (Fla. 1954); and *Swilley vs. State* 79 So. 715 (Fla. 1918).

Thus the Florida and Federal tests for determining the insolvency of the Petitioner for the purpose of appointing counsel in a criminal case is the Petitioner's present ability to liquidate assets for the purpose of hiring private counsel. And, as the trial court in this case was well aware, due to the pendency of the dissolution of marriage the present ability to liquidate did not exist. Thus it was reversible error for the trial court to refuse to appoint counsel to represent this Petitioner in the hearing on the indirect criminal contempt in violation of the Defendant's Sixth Amendment Rights to assistance of counsel as incorporated and made applicable to the State through the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For the above reasons and the authorities cited herein, it is respectfully requested that this Honorable Court grant its Writ of Certiorari and enter its Order quashing the decision hereby sought to be reviewed and grant such other and further relief as seems right and appropriate to this Court.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was furnished by mail to the Attorney General's Office, 214 Pan American Building, West Palm Beach, Florida 33401.

ALVIN E. ENTIN, ESQ.

Appendix

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA.

Case No. 74-10019
"J" Farrington
"J" Weissing

IN RE: THE MARRIAGE OF
JOHN E. GDOWIK,
Petitioner/Husband

and

AGNES M. GDOWIK,
Respondent/Wife.

ASSIGNMENT OF ERROR

APPELLANT, JOHN E. GDOWIK, herewith assigns as error in the indirect criminal contempt of Court proceedings the following:

1. The findings of fact, finding of guilt, adjudication of guilt, judgment and sentence are contrary to the laws of the State of Florida and the United States of America, and contrary to the Constitution of the State of Florida and the Constitution of the United States of America.

2. The findings of fact, finding of guilt, adjudication of guilt, judgment and sentence are not supported by the legally admissable evidence.

3. The Honorable Louis Weissing erred in taking judicial notice concerning the possession and maintenance of firearms by Judges in their offices or chambers and the conclusions drawn therefrom are in error.

4. The Honorable Louis Weissing erred in his conclusions as to the possibilities of an alleged confrontation of "the most serious order" would likely have occurred and the conclusion drawn from such erroneous conjecture is in error.

5. The Honorable Louis Weissing erred when he determined that the Appellant, John E. Gdowik, was not entitled to the assistance of court-appointed counsel.

6. The findings of fact, finding of guilt, adjudication of guilt, judgment and sentence as entered on November 20, 1975 are inconsistent with the suggestion of indirect criminal contempt as filed by Philip S. Shailer, State Attorney of the Seventeenth Judicial Circuit, on or about October 29, 1975.

7. The Court below was without jurisdiction to hear this cause as part of the proceedings in Case No. 74-10019 being the Dissolution of Marriage proceedings between Appellant and his former wife, Agnes M. Gdowik.

I HEREBY CERTIFY that a true copy of the foregoing was hand-delivered to Philip S. Shailer, State Attorney, Broward County Courthouse, Fort Lauderdale, Florida, this 3rd. day of December, 1975.

JOHN E. GDOWIK

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA.
CIVIL ACTION

No. 74-10019 — Weissing

IN RE: THE MARRIAGE OF
JOHN E. GDOWIK,

Husband,

and

AGNES M. GDOWIK,

Wife.

Fort Lauderdale, Florida
November 10, 1975
9:00 o'clock A.M.

APPEARANCES:

PHILIP S. SHAILER, State Attorney,
appearing on behalf of the State.

JOHN E. GDOWIK,
appearing pro se.

The above-styled case came on for hearing in chambers before the Honorable LOUIS WEISSING, Presiding Judge, at the Broward County Courthouse, Fort Lauderdale, Broward County, Florida, on the 10th day of November, 1975, commencing at 9:00 o'clock A.M.

Thereupon:

The following proceedings were had:

MR. SHAILER: Your Honor, we are here this morning on a citation of indirect contempt, order to show cause issued by the Chief Judge of this Judicial Circuit to Dr. John E. Gdowik.

I assume this is Dr. Gdowik seated her, Your Honor. I don't know whether the doctor is represented by counsel. He did have an attorney call me Friday, but I don't see one here. I wonder if the Court would inquire?

THE COURT: Got a lawyer, Doctor?

MR. GDOWIK: No, I don't, Your Honor.

THE COURT: I had Louis Vitale call Friday from Dade County. He called again this morning and said he wouldn't be here. So if there is anybody else you want —

MR. GDOWIK: There was a lot of people I wanted but I just couldn't afford them.

THE COURT: Well, are you telling me that you are indigent?

MR. GDOWIK: Well, I'm a physician and I will probably make about $20,000.00 this year for income tax purposes. I have had quite a bit of financial difficulty. I haven't paid any of my estimated income tax. I have about $8,000.00 worth of bills that are outstanding right now. I don't know whether I will be able to meet them. I could write a check for an attorney, but at some particular time I'm going to have to pay. I have been told I'm technically insolvent by financial advisors and I just can't afford to go out and make any more debts or borrow any more money. This is the reason why I'm in this problem — one of the reasons.

THE COURT: Is there something in this court file that you are insolvent?

MR. GDOWIK: This is in regard to my ability to hire an attorney.

MR. SHAILER: Your Honor, I doubt if the respondent is insolvent. I think he is gainfully employed — at least I'm led to understand that he is. I doubt that he couldn't make some financial arrangements with a private attorney. Obviously he hasn't been sworn yet, but based on what he has said at this point in time, I don't see any true meeting of the requirements for a determination that he is indigent and insolvent. Perhaps that can, in fact, be established.

THE COURT: Sir, do you want to go on that? Do you want to take testimony or —

MR. GDOWIK: Yes, sir.

THE COURT: All right. Doctor, let me caution you. Sir, a lot of times people will tend to get a little bit carried away under the pressure of circumstances, and I would just, having tried a few problems involving domestic relations, I would expect there will be in this file financial statements and background information on you. So I would caution you, so you don't get carried away with the moment and end up with a perjury charge. Perjury is a lot more serious than any — just about anything else. You can get popped pretty good good on that.

Thereupon:

JOHN E. GDOWIK

was called as a witness in his own behalf, and being first duly sworn, was examined and testified on his oath as follows:

EXAMINATION

Q (By the Court) Sir, state your name.

A Dr. John Gdowik.

Q And your occupation?

A I'm an osteopathic physician.

Q How long have you been an osteopathic physician?

A Eight years.

Q Where are you practicing?

A Hollywood, Florida.

Q And how long have you been practicing in Hollywood, Florida?

A Four years.

Q Sir, what has been your income for the past four years? Take '74.

A '74, it was $21,400.00.

Q '73.

A '73? It was $28,500.00.

Q '72.

A Offhand, I guess — I think it was around $16,000.00.

Q 16?

A Yes.

Q Sir, do you own stocks?

A No, I don't.

Q Bonds?

A No.

Q Real estate?

A Yes.

Q How much?

A A home and an office. They are both approximately worth $60,000.00.

Q Each?

A Yes, sir.

Q You have got a $60,000.00 home? Is there a mortgage on that home?

A Yes.

Q How much?

A $38,000.00, approximately.

Q $22,000.00 equity?

A Yes, sir.

Q And your office?

A A first mortgage of —

Q The value of that is $60,000.00?

A Yes.

Q And the mortgage?

A There is a mortgage of $37,500.00, approximately. There is a second mortgage of $15,000.00. I have a personal note. And the purpose of getting that note was to purchase this building. The personal note was $12,000.00, reduced to $8,000.00.

THE COURT: Well, actually, your office, that is just about awash, isn't it?

THE WITNESS: Yes.

Q You have got $60,000.00 worth of mortgages or notes on the office building?

A Yes, sir.

Q Have you got any jewelry?

A A watch; a ring.

Q What is the watch worth?

A I think I paid about $50.00 for it about four or five years ago.

Q What is the ring worth?

A About $25.00

Q Any other assets of value?

A I have an automobile.

Q What kind?

A 1969 Mercedes.

Q What is it worth?

A $2,000.00.

Q What else?

A I have furniture.

Q What is it valued at?

A $2,000.00, 2500.

Q Any other assets?

A I have fishing tackle, about $300.00.

Q What else?

A Clothing.

Q Well, that is just what you wear, isn't it?

A Yes.

Q Got any fancy clothes worth a lot of money or just clothes like you have got on now?

A Just like this.

Q Anything else?

A I don't believe so. There are — my complete financial position of all my personal effects is listed in the court file.

Q Where is John Britton? Is he around?

A He is out there.

Q He could tell us real fast where it is in the court file.

A I have a copy, I think. Here is a business financial position statement. It is in the file. It is a copy. That is not the complete one.

This is my personal financial position.

Q Sir, your business comes out here at $77,000.00. And just looking at the bottom line on this one, it looks like you have got $62,000.00 on this.

Tell Mr. Britton to come in.

(Whereupon, Mr. Britton entered the room.)

THE COURT: Mr. Brotton, the question has come up regarding his financial ability to hire a lawyer. Can you help us go through this court file real fast or give us some background?

MR. BRITTON: If I can.

THE COURT: We have got a statement here from the doctor that looks to me like they are adding apples and bananas. They say, "Owner's equity," and the total liabilities I don't — Can you tell me something about that bottom line?

MR. GDOWIK: What is the name of that statement?

MR. BRITTON: This is the document, personal financial statement for the year ended December 31, 19— I don't know what that is, Judge.

THE COURT: It is not in the court file?

MR. BRITTON: Oh, yes, this was filed with Judge Farrington. I thought you were asking me what this meant.

THE COURT: You know it is filed but you can't understand it?

MR. BRITTON: Yes.

MR. GDOWIK: May I be permitted to explain it?

THE COURT: Why, sure.

MR. GDOWIK: May I see it first?

What was the question?

Q (By the Court) Well, sir, when you add liabilities and equity, you come up with a total there of

$62,000.00. I never counted money that way. Of course, I don't know too much about counting.

A These were prepared by me with the aid of a graduate student in business administration at the University of Miami. And this is, he told me, how these statements are made.

The bottom line has to agree with the total fixed assets, for bookkeeping purposes, whatever it is, to balance. The total fixed assets are listed at $62,950.00. There is an equity of $20,853.00, which is reflected in owner's equity. And the total liabilities and owner's equity then add up to $82,950.00. This is supposedly the standard means.

Q I can understand that. Off this statement you are worth $20,000.00 right there.

A Yes.

Q Now, tell me what this one means (indicating).

A This reflects assets which I have in my business, my practice. It reflects the total liabilities and equity. And the reason the $4,000.00 figure is in there is because it shows I — this is the money I would have if I were liquidated at the particular time. Again, the total assets must equal the total liabilities and equity. That is their means of putting that down there, a negative. And that is reflected in the other statement by the debit balance to business under liabilities. In addition to the home mortgage, there is a debit balance of $4,000.00 and something.

MR. SHAILER: Judge, I would ask that these documents that the doctor has presented be marked for identification and be made a part of this proceeding — court file.

THE WITNESS: There are two other documents filed with the Court also.

Q Doctor, I'm going to receive this statement you have handed me, amended personal financial position statement for the year ended December 31st, 19— one nine seven — Is it all right if I add a 4 so we know what we are talking about?

A Sure.

Q I will make that your Exhibit 1.

I will make this one your Exhibit 2.

A There are two other documents reflecting my financial position, if the Court would like those also.

Q I will take anything you want to give me.

A Well, they are in the other file. I will give them to you. This would show where the business expenses were and the personal expenses of money I expended in 1974.

Q I will make this your Exhibit No. 3, a sheet of paper that starts off "Office Gross, $60,218.95."

I will make this one Defendant's Exhibit 4.

Doctor, is this all you want to submit as to your solvency or insolvency, as to whether or not you can afford an attorney?

A Yes, sir.

MR. SHAILER: Your Honor, may I ask one or two questions?

THE COURT: Sure.

CROSS EXAMINATION

Q (By Mr. Shailer) Doctor, are you presently engaged in your professional practice?

A Yes.

Q Do you have patients?

A Yes.

Q Have you had patients throughout the entire year of '75 to date?

A Yes.

Q Has there been any appreciable increase or decrease in the volume of your clientele in this year compared to the previous year?

A Yes, there has been a decrease. There has been an economic downturn in Broward County, and people don't come to the doctor unless they are real sick.

Q But the decrease you are talking about would be that occasioned by the practice in general, rather than you yourself in particular, is that correct?

A That is correct. From time — Not from time to time, but I have made quite a few loans and I have people now that would lend me money without any collateral.

Q I was getting to that. Do you have clients — excuse me, patients —

A Yes.

Q You do presently, currently have accounts receivable?

A Yes.

MR. SHAILER: I have no further questions.

FURTHER EXAMINATION

Q (By the Court) Doctor, is there much change between last year and this year? What are you talking about?

A Well, see, the change between this year and last year as far as gross revenue is probably, and I would be guessing, at this particular point in time, about a $5,000.00 decrease for the first 10 months of '75, as compared to '74. It may be three and it may be four. It was $5,000.00 in May of 1975.

When I went to court I tried to present that evidence but Mr. Britton objected on the basis that my office secretary had not brought in the original receipts. I tried to show the Court at that particular time my business was off and was failing. And I could not enter that as evidence because it wasn't accepted.

Q Sir, don't tell me about that. I have got to concern myself with what I'm hearing. You and Mr. Britton, that is — that is another ball game. I have got to worry about my case.

A All right.

Q You see, you come in here and you introduce evidence before me, and assuming everything you say to be true, you are not indigent under the law of the State of Florida and entitled to have appointed counsel.

A Then I will have to represent myself.

THE COURT: All right. Is the State ready?

MR. SHAILER: Yes, sir.

THE COURT: Let me get the record straight on this thing. This is regarding the indirect contempt filed by the State Attorney. It shows that notice was served on October 30th 1975.

Is that correct, Doctor?

DR. GDOWIK: Yes.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

JULY TERM 1977

CASE NO. 75-2092.

JOHN E. GDOWIK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Decision filed October 18, 1977

Appeal from the Circuit Court for Broward County; Louis Weissing, Judge.

Alvin E. Entin of Franklin, Ullman, Kimler and Entin, P.A., North Miami Beach, for appellant.

Robert L. Shevin, Attorney General, Tallahassee, and Harry M. Hipler, Assistant Attorney General, West Palm Beach, for appellee

PER CURIAM.

Affirmed.

DOWNEY, DAUKSCH and LETTS, JJ., concur.

SUPREME COURT OF FLORIDA

TUESDAY, FEBRUARY 28, 1978

CASE NO. 52,798

DISTRICT COURT OF APPEAL FOURTH DISTRICT
75-2092

JOHN E. GDOWIK,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ADKINS, BOYD, HATCHETT and KARL, JJ., concur

TC
cc: Hon. Clyde Heath, Clerk
Hon. Louis Weissing, Judge
Hon. Robert E. Lockwood, Clerk

Richard C. Entin, Esquire
Harry M. Hipler, Esquire

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: Dublin Causseaux
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MONDAY, APRIL 17, 1978

CASE NO. 52,798

DCA CASE NO. 75-2092

JOHN E. GDOWIK

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On consideration of the petition for rehearing filed by attorney for petitioner, and response thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

C

cc: Hon. Clyde Heath, Clerk
Hon. Louis Weissing, Judge
Hon. Robert E. Lockwood, Clerk

Alvin E. Entin, Esquire
Basil S. Diamond, Esquire

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: Debbie Causseaux
Deputy Clerk

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY FLORIDA

Case No. 74-10019
Judge Weissing

IN RE: The Marriage of

JOHN E. GDOWIK,

Husband,

and

AGNES M. GDOWIK,

Wife.

**FINDINGS OF FACT,
FINDING OF GUILT,
ADJUDICATION OF GUILT,
JUDGMENT AND SENTENCE**

These criminal contempt proceedings directed against JOHN E. GDOWIK, hereinafter referred to as Respondent, came on to be heard for trial on November 10, 1975, before the undersigned Judge, pursuant to that certain Order to Show Cause issued on October 30, 1975, by the Chief Judge of this Judicial Circuit and that certain Order likewise issued on that same date by the Chief Justice of the Florida Supreme Court assigning the undersigned Judge to conduct such proceedings. At

the commencement thereof, Respondent advised the Court that he had not retained counsel and further that he was unable to afford counsel of his own choosing, thereupon requesting that the Court appoint counsel to represent him. Thereupon the Court conducted an indigency hearing, and after taking sworn testimony from the Respondent, as well as receiving four financial exhibits offered by him, this Court found that Respondent had such assets and income as to clearly reflect that he was not indigent or insolvent and that therefore he was not entitled as a matter of law to court-appointed counsel. The trial thereupon commenced, and upon completion of the presentation of testimony by the State Attorney of this Judicial Circuit on behalf of the State, the Court continued completion of the trial to a later date to afford Respondent a further opportunity to retain counsel of his own choosing. A few days later, upon Respondent's advising this Court by telephone that he had not retained and would not be retaining such counsel, the trial was thereupon scheduled to resume on November 18, 1975. On that latter date, Respondent acknowledged that he had had no material change in his financial circumstances since the indigency hearing conducted on November 10, 1975, and accordingly he was still not entitled to court-appointed counsel. Respondent then proceeded to present testimony and other evidence on his side of the case, at the conclusion of which both parties rested.

Having heard and considered the testimony and other documentary evidence presented by the parties, the Court finds that the following facts have been proven beyond and to the exclusion of every reasonable doubt:

a) That on Friday, October 17, 1975, the Respondent telephoned the office of the Honorable Otis Farrington, Circuit Court Judge, and demanded of his secretary, Mrs. Meltzer, the issuance by said Judge of the Final Judgment in those certain divorce proceedings and litigation involving Respondent and his wife, which said proceedings were then pending before said Judge in his official capacity; that Respondent stated to Mrs. Meltzer that if the Final Judgment were not ready that he would "tear up" the Courthouse."

b) That on Monday, October 20, 1975, the Respondent did call said Judge's secretary, again demanding the Final Judgment, and did state to her that the Judge was crooked and for that reason would not want to enter the subject Final Judgment.

c) That on Wednesday, October 22, 1975, the Respondent did again call said Judge's secretary inquiring about the Final Judgment and did again state that said Judge "was crooked and fixed, and therefore didn't want to get the papers out."

d) That on Thursday, October 23, 1975, the Respondent did again call said Judge's secretary, advised her that he had received a copy of the Final Judgment, demanded a hearing to rehearing with the Judge, and told her to take down notes and advise the said Judge that "I have never seen a more biased, prejudiced

person. He will rue the day he met me and took a fix. He is bigoted, biased, spineless and gutless. I am going to fix the Judge and John Britton."

e) That on Friday, October 24, 1975, the Respondent did personally proceed to the offices of the said Judge, and did demand of his said secretary an immediate rehearing, 'hat Respondent did then again accuse the Judge of being fixed and corrupt, and did physically start moving past the secretary's desk toward the Judge's private office, saying "I am going to take the Judge apart"; and upon being advised by the secretary that the Judge was not in his office, Respondent did tell her to "be sure and tell the Judge I will be back today and personally take him apart; be sure to tell him that." That the said secretary did thereupon summon a bailiff to meet the Judge upon his arrival that morning in the Broward County Courthouse parking lot, and that such bailiff did meet the Judge and did stay and remain on special duty at and about the Judge's office and chambers for the remainder of that day.

f) That on Monday, October 27, 1975, a bailiff was again summoned and required to remain on special duty in and about the Judge's office and chambers, all as a result of Respondent's conduct, actions and threats as enumerated hereinabove.

g) That on Tuesday, October 28, 1975, the Respondent did again call the Judge's office

and did demand of his secretary a hearing date; that upon being advised that he must first submit a motion in writing requesting such a hearing, he stated that he would not do so and that "I have put up with this long enough — I am going to come up there and kill that s.o.b. and tear up the Courthouse. If the Judge wants publicity, he is going to get it." Respondent did further state that said Judge was not fit to sit on the bench, that he was going to see that the Judge was removed, and he did again repeat that he was "going to kill the s.o.b." A bailiff was again required to be specially assigned to the Judge's chambers.

h) That all of the foregoing acts and incidents occurred within the County of Broward, State of Florida.

The Court additionally notes from the testimony in these proceedings that Respondent was quite disenchanted, to say the least, with various rulings made by Judge Farrington in the domestic relations litigation to which Respondent was a party. By Respondent's own testimony he contacted a myriad of officials and agencies seeking relief or assistance in that regard, including the Honorable John G. Ferris when he was Chief Judge of this Judicial Circuit; the Honorable John H. Moore II, present Chief Judge; the office of the State Attorney; and the Judicial Qualifications Commission. The Court further notes that during this contempt trial, Respondent seemed more interested in having this Court sit in appellate review of Judge Farrington's rulings than in litigating the question of his guilt or innocence of the contemptuous acts as alleged in the Order to Show

Cause issued in this cause, which said acts the Respondent has in fact admitted by his own sworn testimony. The Court further notes that at no time did Respondent pursue normal and proper legal remedies accorded him or any other litigant in our system of justice, to-wit: the right to appeal to a higher court of this State those trial court rulings wherein a litigant believes a judge to have made error. Instead, Respondent chose a course of conduct which, albiet concededly out of frustration on his part, cannot be sanctioned in an equitable system of justice.

This Court further is compelled to set forth certain observations concerning the incident which occurred on October 24, 1975, as is more particularly set forth in Paragraph (e) hereinabove, (the same being the occasion of Respondent's personal visit to the Judge's offices). The Court is well aware that the various bailiffs who maintain the decorum as well as the security in the various courtrooms and judicial chambers of the Broward County Courthouse, are armed with firearms for the protection, if necessary, of the judicial and other court personnel and citizens making use of said Courthouse. Further, this Court is likewise aware that many of the judges are likewise armed or maintain firearms at close hand in their offices or chambers. It is readily conceivable to the undersigned that, had Judge Farrington been in his private office when the Respondent, after uttering threatening words, began to move past the secretary's desk toward the Judge's private office, that the secretary would have immediately yelled out both a warning to the Judge and a cry for help, and would have also buzzed the bailiffs' offices for such help; and that had a bailiff been in the immediate vicinity, he would have arrived with gun drawn, anticipating the

worst. Not only would a confrontation of the most serious order likely have occurred, but a disaster of the ultimate magnitude might have taken place.

WHEREFORE, the undersigned as trier of fact, having found that the material allegations of the Order to Show Cause have been sustained and proven by the applicable standard, to-wit: beyond and to the exclusion of every reasonable doubt, further finds and rules as a matter of law that the aforesaid acts and conduct on the part of the Respondent, JOHN E. GDOWIK, constitute an offense or offenses against the authority and dignity of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and specifically of one of its judicial officers, the Honorable Otis Farrington, Circuit Judge, acting in his judicial capacity, and that said acts and conduct were calculated to embarrass, hinder or obstruct said Court in the orderly administration of justice and tended to bring the administration of the law into disrespect and disregard. It is thereupon,

ORDERED AND ADJUDGED as follows:

1. This Court finds you, JOHN E. GDOWIK, guilty of criminal contempt of court.

2. This Court having found you guilty, and having inquired as to whether you have anything to say why you should not be adjudged guilty of such criminal contempt, and you having said nothing sufficient in that regard, the Court now hereby adjudicates you guilty of such criminal contempt.

3. This Court having adjudicated you guilty of criminal contempt, and having inquired as to whether you have anything to say why you should not be sentenced for such criminal contempt, and you having said nothing sufficient in that regard, it is the judgment and sentence of this Court that you, JOHN E. GDOWIK, shall serve a term of thirty (30) days incarceration in the Broward County Jail, and you are hereby remanded to the custody of the Sheriff of Broward County, Florida, for the carrying out of such sentence.

4. The Court hereby advises you, JOHN E. GDOWIK, that you have thirty (30) days from the date hereof within which to institute an appeal from this Judgment and Sentence, that you have the right to counsel in any such appeal, and that if you cannot afford to retain such counsel and are determined to be indigent or insolvent in that regard, that counsel will be appointed to represent you.

5. In the event that the Respondent undertakes an appeal from this Judgment and Sentence, upon the filing of his Notice of Appeal, he shall be admitted to bail upon the posting of bond in the sum of Five Hundred ($500.00) Dollars.

DONE AND ORDERED at the Broward County Courthouse, Fort Lauderdale, Florida, this 20th day of November, 1975.

/s/ Louis Weissing
CIRCUIT JUDGE

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
R. R. KAUTH
ACTING COUNTY ADMINISTRATOR